Supreme Court, U.S.
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No. 90-1280

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA and KERWICK & CURRAN, INC.,

Petitioners,

vs.

BEN COOPER, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' BRIEF IN REPLY

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April 29, 1991

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Docket No. 90-1280

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA and KERWICK & CURRAN, INC.,

Petitioners,

v.

BEN COOPER, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' BRIEF IN REPLY

This brief is submitted in reply to the opposition brief filed by Ben Cooper, Inc. ("Cooper") dated April 16, 1991. Cooper initially submitted a letter to the Clerk of the Court waiving its right

to oppose the petition. A-61.[1] Following the Court's request for a brief in compliance with the Supreme Court Rules, A-62, the respondent chose to reverse its position and oppose the petition for certiorari. Cooper's arguments, however, are less compelling now than they were when it opposed the petitioners' first petition for certiorari, which was granted on June 28, 1990.

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[1] References to "A-" followed by a page number indicate reference to the Appendix attached hereto.

POINT I

THE ISSUES PRESENTED ARE RIPE FOR REVIEW

The issues presented here--the scope of the bankruptcy court's authority to hear and decide cases and its authority to conduct jury trials--are of national and constitutional importance. To suggest that a conflict on these issues among the circuits is somehow tolerable and should be allowed to percolate, as the respondent argues, Resp. Br. Pt. I, is to ignore the history of this case and the context in which the issues are now presented to the Court.

The percolation doctrine has been applied in cases where the Court has found the record to be "cloudy," or where the Court found it "desirable to have different aspects of an issue further illuminated by the lower courts." *State of Maryland v. Baltimore Radio Show*, 338

U.S. 912, 918 (1950). Here, there is nothing "cloudy" about the record and "further illumination" is neither necessary nor desirable. Some bankruptcy courts are conducting jury trials; others are not. Clear lines have been drawn and "percolation" would not serve to ripen the issues of constitutional import presented in this case. The respondent chooses to ignore, among other things, the fact that the issues in this case have had the opportunity to ripen during the past eleven months since the Court first granted certiorari.

The Court was satisfied that the questions presented by this case merited its attention when it originally granted certiorari on June 28, 1990. The questions presented have not changed. Indeed, the developments in the case law have served to underscore the divergent

views among the circuits. The Eighth Circuit in *In re United Missouri Bank of Kansas City, N.A.*, 901 F.2d 1449, 1450 (8th Cir. 1990), has held "that a bankruptcy judge lacks the statutory authority to conduct jury trials," and explicitly rejected the reasoning of the Second Circuit in this case. *Id.* at 1456. The Tenth Circuit in *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 911 F.2d 380 (10th Cir. 1990), endorsing the views of the Eighth Circuit, has also held that a bankruptcy court has no statutory authority to conduct jury trials. *Id.* at 392.

The respondent also implies that, because the holdings of these cases are based on analyses of the bankruptcy statute, Resp. Br. at 3-4, the conflict among the circuits is only statutory, not constitutional; thus the conflict would

not merit the Court's review. There were, however, constitutional overtones to both courts' rulings: The Eighth Circuit noted the "grave constitutional problems" implicit in the case, *United Missouri Bank*, 901 F.2d at 1450 n.1; and the Tenth Circuit found support for its holding in the seventh amendment's prohibition against the reexamination of factual findings, *Kaiser Steel*, 911 F.2d at 391.[2]

Moreover, conflict among the circuits' interpretations of a federal statutory scheme is a sufficient basis

---

[2] Two other circuits have recently discussed the jury trial issue. The Third and Ninth Circuits have held that bankruptcy courts have no authority to conduct jury trials in non-core proceedings because of the 28 U.S.C. § 157(c)(1) requirement of *de novo* review. *Taxel v. Electronic Sports Research (In re Cinematronics, Inc.)*, 916 F.2d 1444, 1451 (9th Cir. 1990); *Beard v. Braunstein*, 914 F.2d 434, 443 (3d Cir. 1990). While the holdings of these cases are distinguishable from the holding of the Second Circuit in this action, the decisions demonstrate that the issues raised herein are indeed ripe for determination and require clarification from this Court.

for grant of a petition for certiorari. *Brown Transport Corp. v. Atcon, Inc.*, 439 U.S. 1014, 1017 (1978) (White, J. dissenting) (a principal factor in considering petition for certiorari whether "the federal law, statutory *or* constitutional [is] being interpreted and enforced differently in different sections of the country")(emphasis supplied); *see also* Sup. Ct. R. 10.1(a).

POINT II

THE DECISION OF THE SECOND CIRCUIT BEGS THE COURT'S REVIEW

A. The Respondent's Contention That The Decision Below Is Consistent With *Marathon* Ignores The Supreme Court's Rationale In That Case

The respondent's argument in Point II of its opposition brief merely tracks the reasoning of the court below, offering no further explanation for its conclusion that the controversy in this case is a "core" matter. Cooper argues that the decision below is "consistent" with this Court's pronouncement in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). Resp. Br. at 7. Yet, respondent gives no consideration to the Court's rationale in *Marathon*, which established a dichotomy between the two types of claims related to and arising under bankruptcy pro-

ceedings (i.e., private rights as distinguished from rights core to the federal bankruptcy power).

In *Marathon*, the Court did not suggest that the timing of an underlying contract's formation or a claim arising therefrom would govern whether a matter is deemed core or non-core. While disputes arising from post-petition contracts may or may not have a greater impact on a bankruptcy estate than those arising from pre-petition contracts, *Marathon* and its progeny dictate that one examine the nature of a claim to determine whether it is core.

Cooper asserts that "the Second Circuit did in fact consider the state law nature of [this] dispute," Resp. Br. at 7 n.4, and nevertheless found it to be a core matter. Resp. Br. at 8. Had the Second Circuit actually considered the

nature of this dispute according to the *Marathon* rationale, however, it would have concluded that the matter at issue, involving ordinary state law contract claims, concerns only private rights.

In *Marathon*, the plurality emphasized that matters at the "core" of the debtor-creditor relationship "must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case." *Marathon*, 458 U.S. at 71. Thus, the Second Circuit's purely mechanical pre-petition/post-petition analysis is not what the Court intended.

Moreover, if the respondent is correct in its assertion that all post-petition activities fall within the bankruptcy court's core jurisdiction

under 28 U.S.C. § 157(b)(2)(A), Resp. Br. at 7-8, including actions involving "the right to recover contract damages," then the statute, too, is flawed. Clearly these significant issues call for clarification by the Court.

B. The Respondent Fails To Acknowledge The Disparate Decisions Among The Courts On The Jury Trial Issue

The respondent baldly asserts that "[n]o further elaboration is necessary and the jury trial issue need not be reviewed" because "the Second Circuit came to the only conclusion consistent with the statutory scheme." Resp. Br. at 9-10. Here, too, the respondent merely tracks the analysis of the Court of Appeals on this issue, but fails to acknowledge that the courts--from the bankruptcy courts to the courts of

appeal--continue to disagree on the issue of whether jury trials can be conducted in bankruptcy courts. *See, e.g., In re Kaiser Steel Corp.*, 911 F.2d at 392 (no statutory authority for bankruptcy judges to conduct jury trials); *Clairmont Transfer Co. v. Rice, Rice, Gilbert & Marston (In re Clairmont Transfer Co.)*, 117 Bankr. 288, 290 (Bankr. W.D. Mich. 1990) (bankruptcy judges are empowered to conduct jury trials).

These cases and numerous other decisions rendered since the Court first granted certiorari in this matter demonstrate the need for a resolution of this most important question. *See generally* Sabino, *Jury Trials, Bankruptcy Judges, and Article III: The Constitutional Crisis of the Bankruptcy Court*, 21 Seton Hall L. Rev. 258 (1991).

Only a clear statement from the Court on the issue will prevent further misinterpretation and inconsistent application of the Bankruptcy Code.

CONCLUSION

For the foregoing reasons a writ of certiorari should be granted.

Respectfully submitted,

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April 29, 1991

APPENDIX

[LETTERHEAD OF LOWENTHAL, LANDAU, FISCHER, ZIEGLER & BRING, P.C.]

February 26, 1991

FEDERAL EXPRESS

Hon. Joseph F. Spaniol, Jr.
Clerk
United States Supreme court
Washington, D.c. 20543

Re: The Insurance Company of the State of Pennsylvania and Kerwick & Curran, Inc. v. Ben Cooper, Inc.

Dear Mr. Spaniol:

We are the attorneys for respondent Ben Cooper, Inc. Pursuant to Rule 15.5, Ben Cooper, Inc. waives its right to file opposition to the petition for certiorari.

Should the Court grant the petition, Ben Cooper, Inc. joins with the motion of the Solicitor General for submission of the briefs previously filed and for oral argument in the Court's April sitting.

Respectfully submitted,

LOWENTHAL, LANDAU, FISCHER, ZIEGLER & BRING, P.C.

By: /s/
Lawrence L. Ginsburg

LLG/con
[4173o]

cc: Mound, Cotton & Wollan
Ohrenstein & Brown
Office of the Solicitor General

[LETTERHEAD OF THE SUPREME COURT OF THE UNITED STATES, OFFICE OF THE CLERK]

March 18, 1991

Lawrence L. Ginsburg, Esquire
Lowenthal, Landau, et al.
250 Park Avenue
New York, NY 10177

Re: 90-1280 - Ins. Co. of Pennsylvania v. Ben Cooper, Inc.

Dear Mr. Ginsburg:

Although your office has waived the right to file a response to the petition for a writ of certiorari in the above case, the Court nevertheless has directed this office to request that a response be filed.

Forty printed copies of your response, together with proof of service thereof, should reach this office on or before April 17, 1991.

Your attention is directed to the provisions of Rule 33 of the rules of this Court. Please note that the color of the cover of your brief should be orange.

Kindly acknowledge receipt of this letter on the enclosed copy.

Very truly yours,

William K. Suter
Clerk

cc: Stuart Cotton, Esquire

trict court review of final orders in *core* proceedings, however, is limited to the analogous review that courts of appeals have over district courts. 28 U.S.C. § 158 (1988); *In re Daniels-Head & Assocs.*, 819 F.2d 914, 918-19 (9 Cir. 1987). Since the jury verdict in a core proceeding is subject only to the traditional standards of appellate review, such proceeding does not violate the Seventh Amendment.

(E)

Finally, we reach the question whether jury trials in the bankruptcy court violate Article III of the Constitution. The essential predicate question, even more fundamental, is whether the statutory authority of bankruptcy judges to enter final judgments in core proceedings runs afoul of Article III. The parties did not raise this issue on appeal, limiting themselves to the question of the interpretation of § 157(b). The conclusion that core jurisdiction is constitutional, however, is implicit in our analysis in Section II of this opinion. That is particularly true in light of our holding that *Marathon*, a case decided under Article III, is to be distinguished from the instant appeal. We therefore assume for the sake of this appeal that § 157(b) passes muster under Article III. *Cf. Arnold Print Works*, *supra*, 815 F.2d at 169 (holding explicitly that Article III "permits a non-Article III bankruptcy court to adjudicate post-petition claims related to administration or liquidation of a debtor's estate because the claims are both historically and factually distinguishable from those at issue in *Marathon*").

If bankruptcy courts have the power to enter final judgments without violating Article III, it follows that jury verdicts in the bankruptcy courts do not violate

Article III. The primary purpose of this Article is to ensure a federal judiciary free from pressure from the other branches of government. *E.g.*, *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 848 (1986); *United States* v. *Will*, 449 U.S. 200, 218 (1980). If anything, jurors are less likely to feel pressure from the executive and legislative branches than are bankruptcy judges, who depend on the other branches for reappointment to office. *Granfinanciera*, *supra*, 109 S. Ct. at 2801. Additionally, the practice of jury trials in Article I courts has been upheld when the authority of the Article I judges does not otherwise run afoul of Article III. *Pernell* v. *Southall Realty*, 416 U.S. 363 (1974) (local District of Columbia judges); *Collins* v. *Foreman*, 729 F.2d 108 (2 Cir.) (federal magistrates), *cert. denied*, 469 U.S. 870 (1984). We hold, therefore, that jury trials in core proceedings in the bankruptcy court do not violate Article III.

IV.

To summarize:

We hold that the adversary proceeding between Cooper and appellees is core within the meaning of § 157(b), and that the proceeding is properly before the bankruptcy court. We further hold that the issues underlying the proceeding are legal, entitling appellees to a jury trial, as they have demanded. Finally, finding no statutory or constitutional bar, we hold that the jury trial should be in the bankruptcy court.

Reversed and remanded.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
BEN COOPER, INC.,

Plaintiff,

v. M 47

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, KALVIN-MILLER INTERNATIONAL, INC., and KERWICK & CURRAN, INC.,
----------x

July 11, 1989
11:30 a.m.

Before:
HON. LOUIS L. STANTON
District Judge

ORAL DECISION

APPEARANCES

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VICTORIA A. STEWART

(In open court)

THE COURT: Based on the written submissions and the oral arguments of counsel, it is clear to me that the adversary proceeding commenced on May 9, 1989, by Ben Cooper, Inc., against the Insurance Company of the State of Pennsylvania, Kalvin-Miller International, Inc., and Kerwick & Curran, Inc., is not a core proceeding under 28 U.S. Code Section 157.

Core proceedings are those within bankruptcy cases which seek the creation, recognition, determination or adjudication of rights which do not exist independently from Title 11 or the bankruptcy case itself.

Stated differently, core proceedings are those which spring from the operation and application of the bankruptcy code itself. It is a term which is meant to encompass those proceedings which would not exist in the absence of the bankruptcy code.

In contrast, non-core or related proceedings are those which could have been brought in the district court or state court had there been no bankruptcy case filed. They exist irrespective of the fact of the bankruptcy.

The adversary proceeding here raises only state law issues, primarily whether the insurance company is liable for the losses sustained in a fire at the Rossville, Georgia plant, and if the insurance company is not liable, whether Kalvin-Miller or Kerwick & Curran are liable.

Now, of course, the outcome of that proceeding may have an economic impact on the consummation of the plan which has been approved by Judge Blackshear on April 4, but it does not follow that it is therefore a core proceeding under either Section 157(b)(2)(A) which refers to matters concerning the administration of the estate, or section 157(b)(2)(L) which concerns confirmations of plans, and to hold that it is a core proceeding under either of those clauses would read those clauses too broadly.

An action is not a core proceeding simply because its outcome can result in funds being brought into the estate. Rather, that connection makes it a related proceeding. In the Blue Point Carpet case the court pointed out that even where a breach of contract action is necessary to fund a reorganization,

treatment of the matter as a core proceeding is unjustified since otherwise even the Marathon case would have constituted a core proceeding, and order that construction the bankruptcy amendments of 1984 would be as unconstitutional as was the predecessor statute.

The proceeding not being a core proceeding, it cannot be rendered a core proceeding by any provisions of the plan. This raises the question whether the reference to the bankruptcy court should be withdrawn. Title 28 United States Code Section 157(d) states that a district court may withdraw in whole or in part any proceeding referred to under that section on timely motion of any party for cause shown.

The propriety of withdrawal in this case centers on the dispute whether the defendants are entitled to jury trial in the adversary proceeding. Ben Cooper's complaint in the adversary proceeding contains three counts. The first seeks a judgment that the policy issued by the insurance company is still in effect and that the insurance company is liable for Ben Cooper's losses sustained in the fire at the Rossville, Georgia plant. It seeks damages of $2 million and punitive damages of $5 million.

The second and third counts respectively argue that Kalvin Miller and Kerwick & Curran were negligent in the roles that they played in helping Ben Cooper obtain insurance. The defendant's answers contain jury demands.

The defendants are entitled to a jury trial with respect to at least some of

the debtor's claims and their affirmative defenses. The majority of cases hold that Congress did not intend that bankruptcy judges preside over jury trials in non-core proceedings, since the requirement of de novo review in a district court would be incompatible with the conduct of a jury trial in the bankruptcy court. Review in the district court would then have to be by a de novo jury trial, leading to a meaningless duplication.

The necessity of preserving the defendants' right to a jury trial in this non-core proceeding constitutes good cause for withdrawal of the reference under 28 U.S. Code Section 157(d). The reference being withdrawn, the question is whether the district court should abstain from hearing the matter and allow it to proceed in the state court.

The relevant statute, 28 United States Code Section 1334(c)(2), provides that the district court shall abstain from hearing a non-core proceeding based on a state law or a state law cause of action if an action has been commenced in the state court and that action can be timely adjudicated in a state forum of appropriate jurisdiction.

Section 1334(c)(1) permits a district court to abstain from hearing either a core or a non-core proceeding in the interests of justice or in the interests of comity with state courts or respect for state law.

As I have mentioned, the adversary proceeding here is a non-core proceeding which raises only state law issues. Pursuant to Judge Blackshear's orders, the parties have already conducted expedited discovery which pertains both

to the adversary proceeding and to the pending state court action. There has been no showing that timely adjudication is not available in the state court, and this court will abstain from hearing the adversary proceeding.

The final matter relates to the bankruptcy court's preliminary injunction which on May 24 prohibited the insurance company from canceling its policy with Ben Cooper and prosecuting its state court action.

In this circuit the standard for preliminary injunctive relief requires a showing of irreparable harm and either the likelihood of success upon the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.

At this stage Ben Cooper's likelihood of success on the merits with respect to the insurance company's cancellation of its policy is at best a wide open question. There is no persuasive showing that it has a likelihood of success on the merits at this point. It may prevail or it may not. There are certainly sufficiently serious questions going to the merits to make them a fair ground for litigation.

As far as the balance of hardships is concerned, these tip in favor of the insurance company, not in favor of Ben Cooper. Unlike Judge Blackshear, I do not see how the insurance company's cancellation of its policy would jeopardize Ben Cooper's ability to pay out to its creditors. If the insurance company canceled the policy today, such an action should have no effect on Ben

Cooper's collecting $2 million or $5 million if it is entitled to do that from the insurance company for the January fire, nor would it increase otherwise, or decrease the assets available to Ben Cooper to pay its creditors.

However, by way of the injunction, the insurance company is presently being held to a risk which it says it never contracted to underwrite and for which it is receiving an inadequate premium. Ben Cooper argues that it will be difficult and may be impossible for it to obtain other insurance because of its financial situation as well as because of the insurance company's charges of deceit in the state court action. However, that is problematical. In any event, that situation has not been established as one

with which it is just to tax the insurance company.

Even if it is the case that no other company wishes to assume the Ben Cooper risk, that does not justify inflicting that risk on the insurance company merely because Ben Cooper has covenanted with its creditors that it will maintain insurance on its property. The obtaining of that insurance should be left to open market forces.

Accordingly, that portion of the bankruptcy court's order of May 24, 1989, preventing the insurance company from canceling its insurance policy is vacated. In light of my decision to abstain from hearing the non-core adversary proceeding commenced by Ben Cooper, the remaining portion of the May 24, 1989 order which enjoins the

insurance company from prosecuting the state court action is also vacated.

Is there anything further on this case?

MR. GINSBURG: Your Honor?

THE COURT: Yes.

MR. GINSBURG: In the event that Ben Cooper decides to appeal from this decision, assuming it is appealable, what would the form of request for a stay of your Honor's order -

THE COURT: I am sure it would be whatever the federal rules provide.

MR. GINSBURG: I would ask you now, then, preliminarily for a stay of your order to admit an emergency appeal to the Second Circuit.

THE COURT: I will grant you a 24-hour stay to explore your remedies and file whatever papers you wish to file.

MR. GINSBURG: Thank you. May I request a stay until the close of business tomorrow?

THE COURT: Yes.

(Proceedings adjourned)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In the Matter of

	Case No.
BEN COOPER INC.,	88 B 10484
LIGHT MANUFACTURING CO.,	88 B 10547
AIMWELL PRODUCTS, INC.	88 B 10546
BEN COOPER SALES, CORP.	88 B 10770

Debtors.
----------x

June 15, 1989

United States Custom House
One Bowling Green
New York, New York 10004

s/c Debtor v. The Insurance Company of the State of Pa. --
Pretrial Conference
M/M for Determination of Core v. Non-Core

B E F O R E:

HON. CORNELIUS BLACKSHEAR,

Bankruptcy Judge.

* * *

THE COURT: Very well. Based upon the papers that this Court has read as well as the oral arguments, I think most parties can understand how I came to the

Bench this morning. I have not been convinced otherwise.

This Court's mind is still such that this is a core matter. It's core because of the following reasons, under 157(b)(2)(a), that this is a matter that is inextricably intertwined with the administration of the case. And it is because it was an issue that it was a provision under the plan that this case, under which this case was confirmed, that this was going to be a situation where the Debtor was going to maintain insurance on the property.

Furthermore, it deals somewhat, not quite as strong, with 157(b)(2)(1), the reason it doesn't, this Court expressly within the plan of consummation, retained jurisdiction, because of disputes such as this dispute. And that is a phrase that is normally put in the bankruptcy plan of

consummation, this Court is shocked when it is not, it's normally put in, so the Court can go on to substantive consummation and then thereby closing the case, which refers back to the administration of the case.

We do not need these cases lingering. And it's been the history of this Court, that the Court best equipped to handle these issues in an expedited basis is the Court that confirmed the case, that is familiar with the facts and backgrounds of the case, so that time can move on quickly to resolve the issue.

So for this reason, this Court finds that this is a core matter, it is a core matter for the reasons stated, and that other issues can await the District Court's determination as to whether or not it may wish to withdraw the reference, notwithstanding the fact this

Court has determined that it is a core matter.

28 U.S.C. §157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to --

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions

from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relation-

ship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims be tried in the district court in which the bankruptcy case is

pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer

a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and

decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by a majority vote, authorize such referral of appeals originating within the district.

(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgements, orders, and decrees entered under subsections (a) and (b) of this section.

28 U.S.C. § 1411. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.